33 **S.B. CIVIL MISC. APPEAL NO.184/2007.**

Smt. Amba Devi & Ors.
Vs.
Neel Kamal @ Nilesh Kumar & Ors.

Date of Order :: 15th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manoj Joshi, for the appellants.

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BY THE COURT:

By way of this appeal, the wife, children and parents of the vehicular accident victim Narayan Lal, 27 years in age and said to be earning while working as a cook and by way of agriculture, seek enhancement over the amount of compensation awarded by the Tribunal in the sum of Rs.5,56,000/-.

Learned counsel for the appellants has pressed for consideration the submissions that the Tribunal has erred : i) in applying multiplier of 14 though in view of the age of the deceased at 27 years, multiplier of 18 ought to have been applied; ii) in removing out from consideration the component of agriculture income at Rs.1,500/- per month; and iii) awarding the amount towards pecuniary loss on the lower side though there are three minor children of the deceased.

Having given a thoughtful consideration to the submissions of the learned counsel, and having examined the award impugned, this Court is satisfied that this appeal for enhancement remains bereft of substance and deserves to be dismissed without being admitted. The Tribunal has erred, if at

all, in favour of the claimants and not against them.

It is true that for assessing pecuniary loss the Tribunal has applied a multiplier of 14 only though the age of the deceased has been shown at 27 years and there are three minor children of the deceased; but the fact remains that the Tribunal has taken entire of Rs.3,700/- asserted by the claimants towards monthly salary income of the deceased while working as a cook with one Paras Hotel, Udaipur, as shown by the certificate Ex-19 though the employer of the deceased has not been produced in evidence. Then, such income included Rs.3,000/- towards salary and Rs.700/- towards dietary allowance. Moreover, after assessing annual income of the deceased at Rs.44,400/- (3,700/- x 12), the Tribunal has proceeded to increase this figure by 25% in the name of future prospects and has, thereby, taken average annual income of the deceased at Rs.55,500/-. Assessment of average income in this manner has obviously been much on the higher side. The deceased has not been shown in any settled job or employment for which the component of future prospects for the purpose of assessment of reasonable annual income could be applied.

True it is that the assertion of income of Rs.1,500/- per month from agriculture has not been taken into consideration but then, in the assessment made by the Tribunal, even the amount of Rs.700/- said to be received by the deceased towards dietary allowance has also been taken into consideration. Further, for

establishing that the deceased was earning something extra in agriculture, if there was any land available with him, it was required of the claimants to have proved the facts by cogent corroborative evidence. For want of any such evidence, no such component of income could be considered towards loss for the claimants. Even otherwise, substantial part of the agricultural income, if there were any, by its very nature, would retain itself to the claimants.

In the ultimate analysis, this court is satisfied that the Tribunal has made a reasonably higher side award while taking multiplicand at Rs.37,000/- per annum after deducting one-third on the personal expenditure of the deceased. In the fact situation of this case, assessment of pecuniary loss stands rather on the higher side even when multiplier of 14 has been applied instead of 18 as suggested by the learned counsel for the appellants.

The Tribunal has not restricted the award on non-pecuniary loss either inasmuch as it has allowed Rs.10,000/- to the wife, Rs.10,000/- to the parents and Rs.15,000/- to the children. The award made by the Tribunal cannot be said to be less than that of just compensation admissible in this case and rules out any scope of enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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